

Senate Bill No. 699

CHAPTER 20

An act to amend Sections 120895, 120975, 120980, 121015, 121025, 121035, 121075, 121085, 121105, 121110, and 121125 of, and to add Section 121022 to, the Health and Safety Code, relating to health care, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 17, 2006. Filed with
Secretary of State April 17, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

SB 699, Soto. AIDS: HIV reporting.

(1) Existing law makes provisions for various programs relating to treatment of persons with human immunodeficiency virus (HIV) and the acquired immunodeficiency syndrome (AIDS). Existing law requires that public health records relating to AIDS, containing personally identifying information, that were developed or acquired by state or local public health agencies be confidential, and prohibits the disclosure of those records, except as otherwise provided for by law for public health purposes or pursuant to a written authorization by the person who is the subject of the record or by his or her guardian or conservator.

This bill would, to ensure knowledge of current trends in the HIV epidemic and to assure that California remains competitive for federal HIV and AIDS funding, require health care providers and laboratories to report cases of HIV infection to the local health officer using patient names. It would require local health officers to report unduplicated HIV cases by name to the State Department of Health Services. The bill would require the department to promulgate specified emergency regulations, not later than one year from the effective date of those provisions, to conform existing administrative regulations to the provisions of the bill, and would make various other changes related to the disclosure of information on HIV cases to federal, state, and local health agencies, as provided.

Existing law requires each county, designated by the Director of Health Services, to make the HIV test available within its jurisdiction without charge, in an accessible manner and on a confidential basis, through the use of a coded system without linking the individual identity with the test request or results.

This bill would, instead, require that those tests be made available on an anonymous basis.

Existing law subjects any person who willfully or maliciously discloses the content of any confidential public health record, as described, to any 3rd party, except pursuant to a written authorization, or as otherwise authorized by law, to a civil penalty in an amount not less than \$1,000 and

not more than \$5,000, plus court costs, as determined by the court, which penalty and costs shall be paid to the person whose record was disclosed.

This bill would define “confidential public health record” for purposes of those provisions, and would, instead, subject any person who negligently discloses the content of such a confidential public health record to a civil penalty in an amount not less than \$2,500. The bill would further subject any person who willfully or maliciously discloses the content of such a record to a civil penalty in an amount not less than \$5,000 and not more than \$10,000, plus court costs, as determined by the court, which penalty and costs shall be paid to the person whose confidential public health record was disclosed. This bill would make any person who willfully, maliciously, or negligently discloses the content of any confidential public health record to any 3rd party, except pursuant to a written authorization, as described, or as otherwise authorized by law, resulting in economic, bodily, or psychological harm to the person whose confidential public health record was disclosed, guilty of a misdemeanor.

Existing law permits state and local public health agencies to disclose personally identifying information in public health records, under certain circumstances, to other local, state, or federal public health agencies or to corroborating medical researchers, when the confidential information is necessary to carry out the duties of the agency or researcher in the investigation, control, or surveillance of disease, as determined by the local public health agency.

This bill would also permit the disclosure of that personally identifying information in public health records by the agent of such a local public health agency.

By creating new crimes involving the unlawful disclosure of confidential public health records, and by imposing new duties on local health officers with respect to the reporting of information on HIV cases, the bill would create a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature that:

(a) State and local health departments, medical testing agencies, and health care providers continue to work in a collaborative manner to ensure that human immunodeficiency virus (HIV) testing and counseling services are offered in a culturally and linguistically appropriate manner.

(b) Information on HIV testing be reported and maintained in accordance with existing state and federal privacy statutes.

(c) Information on cases of HIV infection not be used for any purpose other than routine public health practices that include, but are not limited to, HIV-related surveillance and epidemiology.

SEC. 2. Section 120895 of the Health and Safety Code is amended to read:

120895. (a) Each county, designated by the director, shall make the test available within its jurisdiction without charge, in an accessible manner and the tests shall be made available by the county on an anonymous basis through use of a coded system with no linking of individual identity with the test request or results. The number and location of sites in each county designated by the director shall be approved by the director. The test shall be made available by the county either directly or by contract with a physician and surgeon or with any clinic or health facility licensed by the department. Neither the county nor anyone else administering the test described in this section and Sections 120885 and 120890, shall ask for the name, social security number, or any other information that could reveal the identity of the individual who takes the test. Each alternative test site shall make available confidential information and referral services, within the funds available, to individuals who seek testing. A county may subcontract with individuals or entities to provide information and referral services.

All alternative test sites shall provide a referral list of physicians and surgeons or clinics knowledgeable about AIDS, to all persons who have any known risk factor for AIDS, especially those who have a reactive antibody test, for further information and explanation of the test results and for medical evaluation.

At a minimum, individuals seeking testing shall be informed about the validity and accuracy of the antibody test before the test is performed. All testing site personnel shall be required to attest to having provided the above information. Furthermore, all individuals who are tested at the sites established by this section and Sections 120885 and 120890 shall be given the results of this test in person. All sites providing antibody testing pursuant to this section and Sections 120885 and 120890 shall have a protocol for referral for 24-hour inpatient and mental health services. All individuals awaiting test results and all persons to whom results are reported shall be informed of available crisis services and shall be directly referred, if necessary.

Each county, designated by the director, shall be required to submit a plan to the department within 45 days after the effective date of this section that details where testing and pretest and posttest information and referral will be provided and the qualifications of the staff who will be

performing the services required by this section and Sections 120885 and 120890. The department shall make training available, especially to smaller counties.

(b) The department shall establish a reimbursement process for counties within 30 days after the effective date of this section for the following services:

- (1) Informing test applicants on the test's reliability and validity.
- (2) Administration of tests, analysis of test samples, and costs associated with the laboratory work required by this antibody test.
- (3) Short-term information and referral sessions, of no more than one visit per person tested for the purpose of transmitting the person's test results and, as requested, for referral to available followup services.

The department shall establish the amounts to be reimbursed for each of these services, but the amounts shall be established at a level to ensure that the purposes of this section and Sections 120885 and 120890 are carried out. Reimbursements shall be made for each service provided.

(c) The department may replace the test for the antibody to the probable causative agent for AIDS with another type of HIV test, as the department deems appropriate.

(d) The director may grant a waiver to a county from the requirements of this section and Sections 120885 and 120890 if the county petitions the director for the waiver and the director determines that the waiver is consistent with the purposes of this section and Sections 120885 and 120890.

(e) A participating county or the department may accept grants, donations, and in-kind services for purposes of carrying out this section and Sections 120885 and 120890.

SEC. 3. Section 120975 of the Health and Safety Code is amended to read:

120975. To protect the privacy of individuals who are the subject of blood testing for antibodies to human immunodeficiency virus (HIV), the following shall apply:

Except as provided in Section 1603.1, 1603.3, or 121022, no person shall be compelled in any state, county, city, or other local civil, criminal, administrative, legislative, or other proceedings to identify or provide identifying characteristics that would identify any individual who is the subject of a blood test to detect antibodies to HIV.

SEC. 4. Section 120980 of the Health and Safety Code is amended to read:

120980. (a) Any person who negligently discloses results of an HIV test, as defined in subdivision (c) of Section 120775, to any third party, in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), or except as provided in Section 1603.1, 1603.3, or 121022 or any other statute that expressly provides an exemption to this section, shall be assessed a civil penalty in an amount not to exceed two thousand five hundred dollars (\$2,500) plus

court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(b) Any person who willfully or maliciously discloses the results of an HIV test, as defined in subdivision (c) of Section 120775, to any third party, in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), or except as provided in Section 1603.1, 1603.3, or 121022 or any other statute that expressly provides an exemption to this section, shall be assessed a civil penalty in an amount not less than five thousand dollars (\$5,000) and not more than ten thousand dollars (\$10,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(c) Any person who willfully, maliciously, or negligently discloses the results of an HIV test, as defined in subdivision (c) of Section 120775, to a third party, in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), or except as provided in Section 1603.1, 1603.3, or 121022 or any other statute that expressly provides an exemption to this section, that results in economic, bodily, or psychological harm to the subject of the test, is guilty of a misdemeanor, punishable by imprisonment in the county jail for a period not to exceed one year, or a fine of not to exceed twenty-five thousand dollars (\$25,000), or both.

(d) Any person who commits any act described in subdivision (a) or (b) shall be liable to the subject for all actual damages, including damages for economic, bodily, or psychological harm that is a proximate result of the act.

(e) Each disclosure made in violation of this chapter is a separate and actionable offense.

(f) Except as provided in Article 6.9 (commencing with Section 799) of Chapter 1 of Part 2 of Division 1 of the Insurance Code, the results of an HIV test, as defined in subdivision (c) of Section 120775, that identifies or provides identifying characteristics of the person to whom the test results apply, shall not be used in any instance for the determination of insurability or suitability for employment.

(g) “Written authorization,” as used in this section, applies only to the disclosure of test results by a person responsible for the care and treatment of the person subject to the test. Written authorization is required for each separate disclosure of the test results, and shall include to whom the disclosure would be made.

(h) Nothing in this section limits or expands the right of an injured subject to recover damages under any other applicable law. Nothing in this section shall impose civil liability or criminal sanction for disclosure of the results of tests performed on cadavers to public health authorities or tissue banks.

(i) Nothing in this section imposes liability or criminal sanction for disclosure of an HIV test, as defined in subdivision (c) of Section 120775,

in accordance with any reporting requirement for a case of HIV infection, including AIDS by the department or the Centers for Disease Control and Prevention under the United States Public Health Service.

(j) The department may require blood banks and plasma centers to submit monthly reports summarizing statistical data concerning the results of tests to detect the presence of viral hepatitis and HIV. This statistical summary shall not include the identity of individual donors or identifying characteristics that would identify individual donors.

(k) “Disclosed,” as used in this section, means to disclose, release, transfer, disseminate, or otherwise communicate all or any part of any record orally, in writing, or by electronic means to any person or entity.

(l) When the results of an HIV test, as defined in subdivision (c) of Section 120775, are included in the medical record of the patient who is the subject of the test, the inclusion is not a disclosure for purposes of this section.

SEC. 5. Section 121015 of the Health and Safety Code is amended to read:

121015. (a) Notwithstanding Section 120980 or any other provision of law, no physician and surgeon who has the results of a confirmed positive test to detect HIV infection of a patient under his or her care shall be held criminally or civilly liable for disclosing to a person reasonably believed to be the spouse, or to a person reasonably believed to be a sexual partner or a person with whom the patient has shared the use of hypodermic needles, or to the local health officer, that the patient has tested positive on a test to detect HIV infection, except that no physician and surgeon shall disclose any identifying information about the individual believed to be infected, except as required in Section 121022.

(b) No physician and surgeon shall disclose the information described in subdivision (a) unless he or she has first discussed the test results with the patient and has offered the patient appropriate educational and psychological counseling, that shall include information on the risks of transmitting the human immunodeficiency virus to other people and methods of avoiding those risks, and has attempted to obtain the patient’s voluntary consent for notification of his or her contacts. The physician and surgeon shall notify the patient of his or her intent to notify the patient’s contacts prior to any notification. When the information is disclosed to a person reasonably believed to be a spouse, or to a person reasonably believed to be a sexual partner, or a person with whom the patient has shared the use of hypodermic needles, the physician and surgeon shall refer that person for appropriate care, counseling, and followup. This section shall not apply to disclosures made other than for the purpose of diagnosis, care, and treatment of persons notified pursuant to this section, or for the purpose of interrupting the chain of transmission.

(c) This section is permissive on the part of the attending physician, and all requirements and other authorization for the disclosure of test results to detect HIV infection are limited to the provisions contained in this chapter, Chapter 10 (commencing with Section 121075) and Sections 1603.1 and

1603.3. No physician has a duty to notify any person of the fact that a patient is reasonably believed to be infected with HIV, except as required by Section 121022.

(d) The local health officer may alert any persons reasonably believed to be a spouse, sexual partner, or partner of shared needles of an individual who has tested positive on an HIV test about their exposure, without disclosing any identifying information about the individual believed to be infected or the physician making the report, and shall refer any person to whom a disclosure is made pursuant to this subdivision for appropriate care and followup. Upon completion of the local health officer's efforts to contact any person pursuant to this subdivision, all records regarding that person maintained by the local health officer pursuant to this subdivision, including, but not limited to, any individual identifying information, shall be expunged by the local health officer.

(e) The local health officer shall keep confidential the identity and the seropositivity status of the individual tested and the identities of the persons contacted, as long as records of contacts are maintained.

(f) Except as provided in Section 1603.1, 1603.3, or 121022, no person shall be compelled in any state, county, city, or local civil, criminal, administrative, legislative, or other proceedings to identify or provide identifying characteristics that would identify any individual reported or person contacted pursuant to this section.

SEC. 6. Section 121022 is added to the Health and Safety Code, to read:

121022. (a) To ensure knowledge of current trends in the HIV epidemic and to assure that California remains competitive for federal HIV and AIDS funding, health care providers and laboratories shall report cases of HIV infection to the local health officer using patient names. Local health officers shall report unduplicated HIV cases by name to the department.

(b) The department and local health officers shall ensure continued reasonable access to anonymous HIV testing through alternative testing sites, as established by Section 120890, and in consultation with HIV planning groups and affected stakeholders, including representatives of persons living with HIV and health officers.

(c) The department shall promulgate emergency regulations to conform the relevant provisions of Article 3.5 (commencing with Section 2641.5) of Chapter 4 of Title 17 of the California Code of Regulations, consistent with this chapter, within one year of the effective date of this section.

(d) Pursuant to Section 121025, reported cases of HIV infection shall not be disclosed, discoverable, or compelled to be produced in any civil, criminal, administrative, or other proceeding.

(e) State and local health department employees and contractors shall be required to sign confidentiality agreements developed by the department that include information related to the penalties for a breach of confidentiality, and the procedures for reporting a breach of confidentiality, prior to accessing confidential HIV-related public health

records. Those agreements shall be reviewed annually by either the department or the appropriate local health department.

(f) No person shall disclose identifying information reported pursuant to subdivision (a) to the federal government, including, but not limited to, any agency, employee, agent, contractor, or anyone else acting on behalf of the federal government, except as permitted under subdivision (b) of Section 121025.

(g) (1) Any potential or actual breach of confidentiality of HIV-related public health records shall be investigated by the local health officer, in coordination with the department, when appropriate. The local health officer shall immediately report any evidence of an actual breach of confidentiality of HIV-related public health records at a city or county level to the department and the appropriate law enforcement agency.

(2) The department shall investigate any potential or actual breach of confidentiality of HIV-related public health records at the state level, and shall report any evidence of such a breach of confidentiality to an appropriate law enforcement agency.

(h) Any willful, negligent, or malicious disclosure of cases of HIV infection reported pursuant to subdivision (a) shall be subject to the penalties prescribed in Section 121025.

(i) Nothing in this section shall be construed to limit other remedies and protections available under state or federal law.

SEC. 7. Section 121025 of the Health and Safety Code is amended to read:

121025. (a) Public health records relating to human immunodeficiency virus (HIV) or acquired immunodeficiency syndrome (AIDS), containing personally identifying information, that were developed or acquired by state or local public health agencies, or an agent of such an agency, shall be confidential and shall not be disclosed, except as otherwise provided by law for public health purposes or pursuant to a written authorization by the person who is the subject of the record or by his or her guardian or conservator.

(b) In accordance with subdivision (f) of Section 121022, state or local public health agencies, or an agent of such an agency, may disclose personally identifying information in public health records, as described in subdivision (a), to other local, state, or federal public health agencies or to corroborating medical researchers, when the confidential information is necessary to carry out the duties of the agency or researcher in the investigation, control, or surveillance of disease, as determined by the state or local public health agency.

(c) Any disclosure authorized by subdivision (a) or (b) shall include only the information necessary for the purpose of that disclosure and shall be made only upon agreement that the information will be kept confidential and will not be further disclosed without written authorization, as described in subdivision (a).

(d) No confidential public health record, as defined in subdivision (c) of Section 121035, shall be disclosed, discoverable, or compelled to be produced in any civil, criminal, administrative, or other proceeding.

(e) (1) Any person who negligently discloses the content of any confidential public health record, as defined in subdivision (c) of Section 121035, to any third party, except pursuant to a written authorization, as described in subdivision (a), or as otherwise authorized by law, shall be subject to a civil penalty in an amount not to exceed two thousand five hundred dollars (\$2,500), plus court costs, as determined by the court, which penalty and costs shall be paid to the person whose record was disclosed.

(2) Any person who willfully or maliciously discloses the content of any confidential public health record, as defined in subdivision (c) of Section 121035, to any third party, except pursuant to a written authorization, or as otherwise authorized by law, shall be subject to a civil penalty in an amount not less than five thousand dollars (\$5,000) and not more than ten thousand dollars (\$10,000), plus court costs, as determined by the court, which penalty and costs shall be paid to the person whose confidential public health record was disclosed.

(3) Any person who willfully, maliciously, or negligently discloses the content of any confidential public health record, as defined in subdivision (c) of Section 121035, to any third party, except pursuant to a written authorization, or as otherwise authorized by law, that results in economic, bodily, or psychological harm to the person whose confidential public health record was disclosed, is guilty of a misdemeanor, punishable by imprisonment in the county jail for a period not to exceed one year, or a fine of not to exceed twenty-five thousand dollars (\$25,000), or both, plus court costs, as determined by the court, which penalty and costs shall be paid to the person whose confidential public health record was disclosed.

(4) Any person who commits any act described in paragraph (1), (2), or (3), shall be liable to the person whose confidential public health record was disclosed for all actual damages for economic, bodily, or psychological harm that is a proximate result of the act.

(5) Each violation of this section is a separate and actionable offense.

(6) Nothing in this section limits or expands the right of an injured person whose confidential public health record was disclosed to recover damages under any other applicable law.

(f) In the event that a confidential public health record, as defined in subdivision (c) of Section 121035, is disclosed, the information shall not be used to determine employability, or insurability of any person.

SEC. 8. Section 121035 of the Health and Safety Code is amended to read:

121035. For purposes of this chapter:

(a) “Disclosed” or “disclosure” or “discloses” has the same meaning as set forth in subdivision (b) of Section 121125.

(b) “State or local public health agencies” are the department, and any local entity that a health officer, as defined in Section 120100, serves.

(c) “Confidential public health record or records” means any paper or electronic record maintained by the department or a local health department or agency, or its agent, that includes data or information in a manner that identifies personal information, including, but not limited to, name, social security number, address, employer, or other information that may directly or indirectly lead to the identification of the individual who is the subject of the record.

SEC. 9. Section 121075 of the Health and Safety Code is amended to read:

121075. Research records, in a personally identifying form, developed or acquired by any person in the course of conducting research or a research study relating to HIV or AIDS shall be confidential, and these confidential research records shall not be disclosed by any person in possession of the research record, nor shall these confidential research records be discoverable, nor shall any person be compelled to produce any confidential research record, except as provided by this chapter.

SEC. 10. Section 121085 of the Health and Safety Code is amended to read:

121085. (a) Confidential research records shall be protected in the course of conducting financial audits or program evaluations, and audit personnel shall not directly or indirectly identify any individual research subject in any report of a financial audit or program evaluation. To the extent it is necessary for audit personnel to know the identity of individual research subjects, authorized disclosure of confidential research records shall be made on a case-by-case basis, and every prudent effort shall be exercised to safeguard the confidentiality of these research records in accordance with this chapter. Information disclosed for audit or evaluation purposes should be used only for audit and evaluation purposes and may not be redisclosed or used in any other way.

(b) Nothing in this section imposes liability or criminal sanction for disclosure of confidential research records in accordance with any reporting requirement for a case of HIV, including AIDS, by the department or the Centers for Disease Control and Prevention under the United States Public Health Services.

SEC. 11. Section 121105 of the Health and Safety Code is amended to read:

121105. Prior to participation of an individual in a research study relating to HIV or AIDS, both of the following requirements shall be met:

(a) The informed consent of each research subject shall be obtained in the method and manner required by Section 46.116, (a) and (b), of Part 46 of Title 45 of the Code of Federal Regulations and be documented in accordance with Section 46.117 of that part.

(b) Each research subject shall be provided with an explanation in writing, in language understandable to the research subject, of the rights and responsibilities of researchers and research subjects under this chapter.

SEC. 12. Section 121110 of the Health and Safety Code is amended to read:

121110. (a) Any person who negligently discloses the content of any confidential research record, as defined in subdivision (c) of Section 121125, to any third party, except pursuant to this chapter, shall be assessed a civil penalty in an amount not to exceed two thousand five hundred dollars (\$2,500), plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(b) Any person who willfully or maliciously discloses the content of any confidential research record, as defined in subdivision (c) of Section 121125, to any third party, except pursuant to this chapter, shall be assessed a civil penalty in an amount not less than five thousand dollars (\$5,000) and not more than ten thousand dollars (\$10,000), plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(c) Any person who willfully, maliciously, or negligently discloses the content of any confidential research record, as defined in subdivision (c) of Section 121125, to a third party, except pursuant to this chapter, that results in economic, bodily, or psychological harm to the research subject, is guilty of a misdemeanor, punishable by imprisonment in the county jail for a period not to exceed one year, or a fine of not to exceed twenty-five thousand dollars (\$25,000), or both.

(d) Any person who commits any act described in subdivision (a) or (b) shall be liable to the subject for all actual damages for economic, bodily, or psychological harm that is a proximate result of the act.

(e) Any person who negligently or willfully violates Section 121105 is guilty of an infraction punishable by a fine of twenty-five dollars (\$25).

(f) Each violation of this chapter is a separate and actionable offense.

(g) Nothing in this section limits or expands the right of an injured research subject to recover damages under any other applicable law.

SEC. 13. Section 121125 of the Health and Safety Code is amended to read:

121125. For purposes of this chapter:

(a) “AIDS” means acquired immunodeficiency syndrome.

(b) “Disclosed” means to disclose, release, transfer, disseminate, or otherwise communicate all or any part of any confidential research record orally, in writing, or by electronic means to any person or entity, or to provide the means for obtaining the records.

(c) “Confidential research record or records” means any data or information in a personally identifying form, including name, social security number, address, employer, or other information that could, directly or indirectly, in part or in sum, lead to the identification of the individual research subject, developed or acquired by any person in the course of conducting research or a research study relating to HIV or AIDS.

(d) “HIV” means human immunodeficiency virus.

SEC. 14. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or

changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 15. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make the necessary programmatic, regulatory, and statutory changes to implement an HIV reporting system that produces data that will be accepted by the federal Centers for Disease Control and Prevention, and to ensure that California remains competitive for allocations under the federal Ryan White Comprehensive AIDS Resources Emergency Act (CARE) of 1990 (Public Law 101-381), as amended October 20, 2000, (Public Law 106-345) funding, it is necessary that this act take effect immediately.